

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 JUSE-00 SCA-01 /017 W
-----040218 221118Z /10

R 220924Z JUN 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 9222

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E.O. 11652: N/A
TAGS: CPRS, US, GW
SUBJECT: US-FRG EXTRADITION TREATY NEGOTIATIONS

REFS: (A) STATE 137841; (B) BONN 4511

1. AT BRIEF NEGOTIATING SESSION JUNE 15 WITH JUSTICE
REPS (POETZ AND WALTER), AGREEMENT WAS REACHED ON ALL
MATTERS COVERED IN REFTEL A WITH EXCEPTION OF MATTER
COVERED IN PARAGRAPH 1.

2. WORD FOR WORD TRANSLATION OF LATTER PART OF ARTICLE
2(3)(B) FROM THE GERMAN IS AS FOLLOWS: "THE USE OF THE
MAIL OR OTHER MEANS OF COMMUNICATIONS OR THE USE OF
OTHER MEANS OF CARRYING OUT INTERSTATE OR FOREIGN
COMMERCE IS ALSO AN ELEMENT OF THE SPECIFIC OFFENSE."
FRG CONCERN IS THAT MERE REFERENCE TO "USE OF THE MAILS"
IN ENGLISH TEXT DOES NOT EXPRESSLY OR ADEQUATELY ALSO
ENCOMPASS USE OF OTHER MEANS OF COMMUNICATIONS THAN
THE MAILS. THEY DO NOT CONSIDER THAT "OTHER MEANS OF
CARRYING OUT INTERSTATE OR FOREIGN COMMERCE" IS THE
LANGUAGE CORRESPONDING TO THE GERMAN "OR OTHER MEANS
OF COMMUNICATIONS" OR SUFFICIENTLY CLEARLY ENCOM-
PASSES TELECOMMUNICATIONS SO THAT GERMAN EXTRADITION
AUTHORITIES WOULD NOT LIKELY HAVE DIFFICULTIES.
IT IS IN THE INTEREST OF THE US THAT NOT ONLY MAIL

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FRAUD BUT ALSO FRAUD BY WIRE (BY TELEGRAM, TELEX AND/
OR TELEPHONES) BE SUFFICIENTLY CLEARLY ENCOMPASSED SO
THAT NO PROBLEM ARISES IN CONNECTION WITH GERMAN
HANDLING OF ANY US REQUEST WHETHER "USE OF THE MAILS
OR OTHER MEANS OF CARRYING OUT INTERSTATE OR
FOREIGN COMMERCE" COVERS SUCH FRAUDS. GERMAN TENDENCY
WOULD BE TO VIEW "OTHER MEANS OF CARRYING OUT INTER-

STATE OR FOREIGN COMMERCE" AS INTENDED TO COVER INTER-STATE TRANSPORTATION AND NOT AS ENCOMPASSING "OTHER MEANS OF COMMUNICATIONS." EMBASSY OFFICER UNDERTOOK ONCE MORE TO RAISE FOR DEPARTMENT'S CONSIDERATION THE SUGGESTION MADE IN PARAGRAPH 2 OF REFTEL B AND TO RECOMMEND FOR INSERTION INTO ENGLISH TEXT AFTER MAILED "OR OTHER MEANS OF COMMUNICATION."

3. GERMAN REPS ASKED TO BE PROVIDED ASAP BEFORE SIGNING OF TREATY WITH PAPERS AND INFORMATION SOUGHT AS REPORTED PARAGRAPH 7 REFTEL B, INCLUDING AT LEAST PAPERS WITH INFORMATION THAT COULD BE MADE AVAILABLE BEFORE TREATY IS TRANSMITTED BY SECSTATE TO PRESIDENT FOR ONWARD TRANSMISSION TO SENATE.

4. DISCUSSION OF ARTICLE 8 RESULTED IN DELETION OF PARAGRAPH B, THE ONLY PARAGRAPH OF ARTICLE 8 NOW READING "EXTRADITION SHALL NOT BE GRANTED WHEN THE PERSON WHOSE EXTRADITION IS REQUESTED..." ETC.

5. DEPARTMENT HAS ALREADY RECEIVED GERMAN TREATY TEXT REFLECTING STATUS AS OF JUNE 15, 1977, AND WILL BE FORWARDING SAME TO DEPARTMENT BY AIRGRAM TOGETHER WITH ENGLISH TEXT REFLECTING STATUS AS OF JUNE 15.

6. IN A LETTER TRANSMITTING THE NEW GERMAN TEXT AS OF LIMITED OFFICIAL USE

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JUNE 15, POETZ AS AGREED, HAS PROPOSED THE ENUMERATION IN THE PROTOCOL OF SIGNATURE OF THE CONVENTIONS TO WHICH ARTICLE 4(3)(B) HAS REFERENCE AT THE TIME OF THE CONCLUSION OF THE EXTRADITION AGREEMENT. POETZ SUGGESTS THAT THE OPERATIVE PARA ON THIS MATTER MIGHT READ:

BEGIN TEXT

WITH RESPECT TO THE INTERPRETATION OF ARTICLE 4(3)(B) THE CONTRACTING PARTIES MUTUALLY AGREE THAT AT THE TIME OF THE CONCLUSION OF THE TREATY, THIS PROVISION HAS REFERENCE IN PARTICULAR ("INSBESONDERE") TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF GENOCIDE OF DECEMBER 9, 1948, THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT OF DECEMBER 16, 1970, THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION OF SEPTEMBER 23, 1971, AND THE CONVENTION FOR THE PREVENTION, PROSECU-

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 JUSE-00 SCA-01 /017 W
-----040223 221119Z /10
R 220924Z JUN 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 9223

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TION AND PUNISHMENT OF CRIMINAL ACTS AGAINST PERSONS
ENTITLED TO SPECIAL PROTECTION UNDER INTERNATIONAL LAW,
INCLUDING DIPLOMATS, OF DECEMBER 14, 1973.

END TEXT

COMMENT: THE WORD "INSBESONDERE" TRANSLATES AS
"ESPECIALLY, PARTICULARLY, PRINCIPALLY, IN PARTICULAR,"
THUS POSSIBLY IMPLYING THAT THE ENUMERATED CONVENTIONS
ARE IN SOME SPECIAL CLASS AS OPPOSED TO OTHERS TO
WHICH ARTICLE 4(3)(B) MIGHT EVENTUALLY BE CONSIDERED TO
HAVE REFERENCE. PERHAPS IN LIEU OF "IN PARTICULAR"
THE ENGLISH TEXT COULD READ "IN ANY EVENT" UNLESS WE
WISH THE LISTING TO BE MORE OR LESS EXCLUSIVE OF ANY
OTHER CONVENTIONS EXISTING (CONCLUDED, TO WHICH THE US,
THE FRG, OR THE US AND THE FRG ARE PARTIES?) AT THE
TIME THE EXTRADITION TREATY IS CONCLUDED. WE NOTE
THAT REFERENCE TO THE SINGLE CONVENTION ON NARCOTIC
DRUGS (AS AMENDED BY MARCH 25, 1972 PROTOCOL OF GENEVA)
HAS BEEN OMITTED (SEE NOTE TO ARTICLE 4 IN BONN'S
A-66 OF MARCH 4, 1977).

7. UPON RECEIPT OF RESULTS OF DEPARTMENT'S LS
REVIEW, EMBASSY WILL DISCUSS SAME WITH JUSTICE MINISTRY
REPS IN EFFORT TO REACH FINAL AGREEMENT ON FULL TEXT.
WE ANTICIPATE THAT DISCREPANCIES IN TEXT OF ANNEX ARE
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DUE TO LINGUISTIC DIFFERENCES ONLY, WHICH ARE JUSTIFIED BY EFFORTS TO HAVE LISTS BE THE LEGAL RATHER THAN THE LINGUISTIC EQUIVALENTS OF EACH OTHER.

8. VISIT OF FRG JUSTICE MINISTER VOGEL TO WASHINGTON IS NOW SCHEDULED FOR OCTOBER 29-NOVEMBER 3, AND MEETING WITH ATTORNEY GENERAL BELL IS MOST LIKELY ON OCTOBER 30 OR NOVEMBER 1. DAY OF SUCH MEETING APPEARS LOGICAL DAY FOR SIGNING OF NEW EXTRADITION TREATY BY ATTORNEY GENERAL AND MINISTER. COULD DEPARTMENT ASCERTAIN WHETHER FRG EMBASSY WOULD TYPE GERMAN TEXT, OR WOULD NORMAL PRACTICE REQUIRE THAT DEPARTMENT PREPARE GERMAN TEXT AS WELL AS THE ENGLISH TEXT? (EMBASSY BELIEVES IT COULD ARRANGE FOR FOREIGN OFFICE TO TYPE GERMAN TEXT SHOULD THIS PROVE MOST DESIRABLE; IN THIS CASE, DOES L/T CARE WHAT TYPE OF PAPER AND BINDER IS USED?)

9. WOULD THE DEPARTMENT OR THE JUSTICE DEPARTMENT WISH TO ISSUE A PRESS RELEASE CONCERNING SIGNING OF TREATY? IF SO, TEXT WOULD NEED ADVANCE COORDINATION WITH FRG FONOFF AND JUSTICE MINISTRY.

10. ACTION REQUESTED: DEPARTMENT REACTION TO PARAGRAPH 2 ABOVE AND INFORMATION FOR RESPONSE TO FRG JUSTICE MINISTRY AND FOREIGN OFFICE ON QUESTIONS IN PARAGRAPHS 8 AND 9, ABOVE..
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION AGREEMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Sent Date: 22-Jun-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977BONN10362
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770222-0985
Format: TEL
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770632/aaaabbwt.tel
Line Count: 200
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 6a93e378-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 STATE 137841, 77 BONN 4511
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 02-Feb-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2075247
Secure: OPEN
Status: NATIVE
Subject: US-FRG EXTRADITION TREATY NEGOTIATIONS
TAGS: CPRS, US, GE
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/6a93e378-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009